No. 473

In the Supreme Court of the United States

OCTOBER TERM, 1948

UNITED STATES OF AMERICA, PETITIONER

v.

REGINALD P. WITTEK

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INDEX

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The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment entered in this case on September 27, 1948, by the United States Court of Appeals for the District of Columbia Circuit.

OPINIONS BELOW

The opinion of the Municipal Court of Appeals for the District of Columbia (R. 35–41) is reported at 75 Wash. Law Rep. 982, 54 A. 2d 747. The opinion of the Court of Appeals (R. 43–49) has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on September 27, 1948 (R. 49). The

jurisdiction of this Court is invoked under 28 U. S. C. sec. 1254 (1).

QUESTION PRESENTED

Whether the United States, in its capacity as owner of defense housing situated within the District of Columbia, is a "landlord" within the meaning of the District of Columbia Emergency Rent Act, and hence cannot increase the rentals on such housing without complying with the procedure prescribed by the Act.

STATUTES INVOLVED

The relevant statutory provisions are set out in the appendix, *infra*, 15–24.

STATEMENT

On October 15, 1946, the United States filed in the Municipal Court for the District of Columbia an amended complaint for possession of real estate (R. 8–9), in which it was alleged that the United States was entitled to possession of premises located in the District of Columbia, held by the defendant without right, and that the defendant was in possession of the premises as a month to month tenant of the plaintiff.

The complaint stated that the property is a housing unit in a defense housing project known as "Bellevue Houses" which is owned by the United States and was constructed by the Navy Department under section 201 of the Second Supplemental National Defense Appropriation Act,

1941, approved September 9, 1940, 54 Stat. 872, 883; that under the authority of section 201 of the 1941 Act, section 7 of the Lanham Act of October 14, 1940, 54 Stat. 1125, 42 U. S. C. 1544, and Executive Order 9070, 7 Fed. Reg. 1529, the management and administration of Bellevue Houses were transferred to the National Housing Administrator. It was further alleged that the Administrator by lease delegated such authority and management to the National Capital Housing Authority; that the defendant entered into possession during August 1946,[1] upon payment of a monthly rental of $38.20; that the rent was subsequently raised to $43.00 per month by administrative determination of the National Capital Housing Authority in accordance with section 201 of the Second Supplemental National Defense Act, 1941, and section 7 of the Lanham Act; that the defendant refused to execute a lease calling for the new rental and refused to pay such rental; that a thirty-day notice to quit was served upon the defendant on February 28, 1946, terminating the tenancy, and that the increase in rent was made without regard to the provisions of the District of Columbia Emergency Rent Act of December 2, 1941, 55 Stat. 788, 45 D. C. Code 1601–1611. The amended complaint also alleged that the ground

[1] This was a typographical error. In his answer respondent alleged that he entered into possession in 1943 (Ans. R. 12). The actual date does not appear to be important here.

upon which possession was sought was that the tenancy was terminated by the notice to quit served upon the defendant as required by 45 D. C. Code 902.

In pre-trial proceedings (R. 13–17) the parties stipulated that the action by the United States is grounded upon notice to quit; that the premises are housing accommodations in the District of Columbia; that no breach of covenant is involved, that the housing was constructed by the Navy Department under section 201 of the Second Supplemental National Defense Appropriation Act, 1941, 54 Stat. 872, 883, and that they were not constructed under the provisions of the Lanham Act, 1940; that in 1941 the United States took title to the premises; and that the notice to quit, dated February 25, 1946 (Pltf.'s Ex. 3, R. 17), was received by the defendant.

The parties having stipulated that the cause might be finally disposed of by the court upon the pleadings, the pre-trial stipulation, and certain exhibits, the trial court on April 18, 1947, filed a memorandum (R. 33–35) in which it dealt with and rejected all of defendant's requested findings which were based on various defenses, including the assertion that the suit should be dismissed for failure to comply with the District of Columbia Emergency Rent Act. So far as here material, the court found that it had jurisdiction of the cause, and that the District of Columbia Emer-

gency Rent Act does not apply. On April 21, 1947, the trial court entered an order awarding possession to the Government (R. 35). Defendant appealed to the Municipal Court of Appeals for the District of Columbia, which affirmed in all respects (R. 35–41).

On September 20, 1947, under the provisions of Title 11 D. C. Code 773, respondent petitioned the Court of Appeals for the District of Columbia Circuit for allowance of an appeal.* While respondent there sought a review of all questions decided by the Municipal Court of Appeals, the Court of Appeals, on January 16, 1948, allowed an appeal limited to two questions (R. 42). The Court of Appeals, by decision of September 27, 1948, disposed of the first question by sustaining the jurisdiction of the Municipal Court. However, the decision was reversed upon the second issue, the court holding that the United States was subject to the restrictions imposed by the District of Columbia Emergency Rent Act on suits for recovery of possession of real property in the District of Columbia (R. 43–49). Its judgment reversed and remanded the cause to the Municipal Court of Appeals with instructions to

*The allowance of an appeal under this section is not a matter of right but of sound discretion. Rule 1 of the Rules of the United States Court of Appeals for the District of Columbia Circuit governing Review of Cases from the Municipal Court of Appeals.

enter orders in accordance with the opinion (R. 49)."[3]

REASONS FOR GRANTING THE WRIT

1. On the merits, the decision below is clearly erroneous. So far as the language of the District of Columbia Emergency Rent Act is concerned, no specific reference is made therein to the United States or to any of its departments or agencies. The term "landlord" is broadly defined in the Act to include "an owner, lessor, sublessor, or other person entitled to receive rent for the use or occupancy of any housing accommodations." "Person" is defined to include "one or more individuals, firms, partnerships, corporations, or associations and any agent, trustee, receiver, assignee, or other representative thereof."[4] In holding that the United States was included within these definitions although not expressly mentioned, the Court of Appeals has departed from a principle of construction settled by a long

[3] Since under 45 D. C. Code 1603 and 1604 (pp. 17–18, *infra*), rent increases can only be lawful if approved by the District of Columbia Rent Administrator, and the increase here in question was not so approved, it follows that the opinion of the Court of Appeals holds that the suit by the United States is barred by 45 D. C. Code 1605, and its judgment is a final one disposing of the case.

[4] The Act defines "housing accommodations" to mean "any building, structure or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes in the District of Columbia * * *." 45 D. C. Code 1611 (a).

series of decisions of this Court. *Dollar Savings Bank* v. *United States*, 19 Wall. 227, 239; *United States* v. *Herron*, 20 Wall. 251, 263; *United States* v. *American Bell Telephone Co.*, 159 U. S. 548, 554; *United States* v. *Stevenson*, 215 U. S. 190, 197; *United States* v. *Mine Workers*, 330 U. S. 258, 270, 272; *United States* v. *Wyoming*, 331 U. S. 440, 449. In the *Mine Workers* case, 330 U. S. at 272–273, this Court said: "There is an old and well-known rule that statutes which in general terms divest pre-existing rights or privileges will not be applied to the sovereign without express words to that effect * * * [unless] there were extraneous and affirmative reasons for believing that the sovereign should also be deemed subject to a restrictive statute."

In the present case, there are affirmative grounds for believing that Congress did not intend that rent controls with respect to defense housing owned by the United States within the District of Columbia should be administered by a local administrative officer appointed by the Commissioners of the District of Columbia, under a statute prescribing standards which are manifestly inapplicable to Government-owned defense housing. The question of statutory construction in this case is not, as the Court of Appeals evidently believed, whether Congress intended that the National Capital Housing Authority should be entirely free of any review by a higher author-

ity, but rather whether Congress intended that such review should be exercised by the Rent Administrator of the District of Columbia within the framework and procedures of the District of Columbia Act.

The history of the District of Columbia Emergency Rent Act, and its relation to the national rent control statutes, demonstrates clearly that Congress, in enacting the District of Columbia law, did not thereby subject Government-owned defense housing within the District to its restrictive provisions. The District of Columbia Emergency Rent Act became law on December 2, 1941, and its provisions, so far as material here, have not been substantially altered since that time. National rent controls first appeared in the Emergency Price Control Act of January 30, 1942, 56 Stat. 23. Section 1 (c) of that Act provided that its provisions "shall be applicable to the United States, its Territories and possessions, and the District of Columbia." Section 2 (b) authorized the Price Administrator to regulate rentals of housing accommodations in any "defense-rental area", which was defined in Section 302 (d) to include "the District of Columbia and any area designated by the Administrator as an area where defense activities have resulted or threatened to result in an increase in the rents for housing accommodations inconsistent with the purposes of this Act." Section 302 (h) of the

Act defined "person" as including "the United States or any agency thereof."

It clearly appears, therefore, that Congress in 1942 expressly conferred on the National Price Administrator authority to control rentals of federal defense housing in the District of Columbia. And by regulation the Price Administrator provided that rentals for federal housing outside the District of Columbia, rented to Army or Navy personnel, including civilian employees of the War and Navy Departments, should be the rents fixed by those Departments. (Rent Regulation for Housing, October 31, 1945, Section 6 (c) (2), 10 Fed. Reg. 13528, 13534.) The Price Administrator apparently did not deem it necessary to exercise his control over such housing within the District of Columbia.

Prior to the amendment in 1947 of the Emergency Price Control Act of 1942, there could be no doubt that the authority of the National Price Administrator was paramount and exclusive with respect to Government-owned defense housing within the District of Columbia, and that the District of Columbia Emergency Rent Act could not be construed to give the District Administrator such authority. In 1947, when Congress modified rent controls, the Emergency Price Control Act was amended in several material respects. Section 202 (a) of the Housing and Rent Act of 1947, 61 Stat. 193, 50 U. S. C.

App., Supp. I, 1881, does not include the United States or any of its political subdivisions in its definition of "person." The latter term is defined to include only "an individual, corporation, partnership, association, or any other organized group of persons, or a legal successor or representative of any of the foregoing." And in Section 209 (b), it was provided that "Notwithstanding any other provision of this Act, the United States or any State or local public agency may maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action or proceeding is authorized by the statute or regulations under which such accommodations are administered."

The clear implication of the 1947 amendments to the national Act is that Congress intended to remove rent control restrictions previously applicable to the United States or any of its departments or agencies. It is submitted that the Court of Appeals erred in disregarding the plain inferences to be drawn from the legislation.

2. The defense housing owned by the Government in the District of Columbia stands on an entirely different footing from ordinary private housing. The purpose of the District of Columbia Emergency Rent Act was to freeze rentals existing on January 1, 1942, on the assumption that they represented a fair rental as a result of bargaining by the parties. And, as the court below

stated (R. 46), under the Act "Deviations from its rigid fixations were permitted only upon proof of 'peculiar circumstances', substantial changes in taxes or other maintenance or operating costs, or substantial capital improvements."

The rentals established for federal housing, however, were established on an entirely different basis. A description in detail of the basis for rentals and the method of administration is to be found in the Annual Report of the National Capital Housing Authority for the year ending June 30, 1947, pages 5–10. Briefly, an economic or cost rent is established. Many of the tenants whose economic condition makes them unable to pay such cost rent are permitted to pay a lower rental, the balance being made up by subsidy. As the financial situation of these tenants progresses, their rent is increased proportionately. Moreover, the size of the particular premises occupied by each tenant is determined according to the size of his family, and thus eviction or transfer to a different dwelling may be required if the family increases or decreases in size. When a tenant's income exceeds the allowable maximum (which is now $3,000 per year) he is "graduated" to private housing as soon as it can be found at a rental which he can afford. To stimulate search for private housing, "comparable rents" for these tenants are established which at the maximum are equal to the rents tenants would be required to pay in private housing.

The District of Columbia Emergency Rent Act is framed on a wholly different basis. The Rent Administrator, in determining whether increases should be permitted, must find justification in the landlord's increased costs or capital improvements, and the like. The Act would not permit increases of rental or changes in premises simply as a result of an improvement in the economic condition of a tenant or an increase in the size of his family. To apply the Emergency Rent Act to federal housing in the District could, therefore, require a complete revision in the method of administration of such developments.

The Court of Appeals intimated in its opinion that the rent increase involved in this case was arbitrary and unwarranted. No such claim has ever been made in this case, and the record plainly shows that the contrary is true. The increase was necessitated by a change in the source of heating gas from the District of Columbia sewage disposal plant (which furnished the gas free) to the Washington Gas Light Company. See Annual Report of National Capital Housing Authority (1947), page 31.

Moreover, while the instant case involves only the question as to power to evict a tenant for failure to pay the increased rental, other provisions of the Rent Control Act make it even clearer

that it was not intended to apply to federal housing. Criminal penalties are imposed upon landlords who violate the Act, and tenants are given the right to recover from landlords penalties in double the amount of excess rent, plus attorneys' fees and costs. 45 D. C. Code 1610 (a) and (b), *infra*, pp. 20–21. In the absence of explicit provisions, Congress clearly could not have intended to subject the United States to such penalties.

3. So far as the importance of the question is concerned, the National Capital Housing Authority manages 7,217 dwellings in the District of Columbia. In addition to the administrative burdens which would be imposed upon the local Rent Administrator,[5] the decision below may subject the United States to suits for the recovery of double the amount of rent increases collected since 1941. This potential liability has been estimated as more than $400,000.

[5] We are advised that the Rent Administrator of the District of Columbia "has never contended the Rent Control Act of the District applied to the properties of the National Capital Housing Authority, as the rents have been fixed by the Authority on the basis of the ability of the tenant to pay rather than upon the rents charged for comparable housing accommodations, which is the criterion fixed in the Rent Act for the determination of rentals by the Rent Administrator," and that if the decision below stands, "the Rent Administrator will be confronted with the almost impossible task, with his present force, of attempting to fix the rental on the approximately 8,000 rental units of the National Capital Housing Authority."

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

DECEMBER 1948.

APPENDIX

Section 201 of the Second Supplemental National Defense Appropriation Act, 1941, approved September 9, 1940, 54 Stat. 872, 885, reads as follows:

> SEC. 201. To the President for allocation to the War Department and the Navy Department for the acquisition of necessary land and the construction of housing units, including necessary utilities, roads, walks, and accessories, at locations on or near Military or Naval Establishments, now in existence or to be built, or near privately owned industrial plants engaged in military or naval activities, which for the purposes of this Act shall be construed to include activities of the Maritime Commission, where the Secretary of War, the Secretary of the Navy, or the Chairman of the Maritime Commission shall certify that such housing is important for purposes under their respective jurisdiction and necessary to the national defense program, $100,000,000: *Provided,* That the average unit cost of such housing projects, including acquisitions of land and the installation of necessary utilities, roads, walks, accessories and collateral expenses shall not be in excess of $3,500: *Provided further,* That in carrying out the purposes of this section the Secretary of War and the Secretary of the Navy may utilize such other agencies of the United States as they may determine upon: *Provided further,* That the Secretary of War and the Secretary of the Navy, at

their discretion, are hereby authorized to rent such housing units, upon completion, to enlisted men of the Army, Navy, Marine Corps with families, to field employees of the Military and Naval Establishments with families, and to workers with families who are engaged, or to be engaged, in industries essential to the military and naval national defense programs, including work on ships under the control of the Maritime Commission. * * * ,

Sections 2, 3, 4, 5, 10, and 11 of the District of Columbia Emergency Rent Act of December 2, 1941, 55 Stat. 788, 45 D. C. Code, sections 1602, 1603, 1604, 1605, 1610, and 1611, so far as here material, read as follows:

45 D. C. Code 1602. Maximum rent ceilings and minimum service standards.

(1) On and after the thirtieth day following the enactment of this chapter, subject to such adjustments as may be made pursuant to sections 45–1603 and 45–1604, maximum-rent ceilings and minimum-service standards for housing accommodations excluding hotels, in the District of Columbia shall be the following:

(a) For housing accommodations rented on January 1, 1941, the rent and service to which the landlord and tenant were entitled on that date.

(b) For housing accommodations not rented on January 1, 1941, but which had been rented within the year ending on that date, the rent and service to which the landlord and tenant were last entitled within such year.

(c) For housing accommodations not rented on January 1, 1941, nor within the year ending on that date, the rent and

service generally prevailing for comparable housing accommodations as determined by the Administrator.

45 D. C. Code 1603. General adjustment of maximum rent ceilings.

Whenever in the judgment of the Administrator a general increase or decrease since January 1, 1941, in taxes or other maintenance or operating costs or expenses has occurred or is about to occur in such manner and amount as substantially to affect the maintenance and operation of housing accommodations generally or of any particular class of housing accommodations, he may by regulation or order increase or decrease the maximum-rent ceiling or minimum-service standard, or both, for such accommodations or class thereof in such manner or amount as will in his judgment compensate, in whole or in part, for such general increase or decrease. Thereupon such adjusted ceiling or standard shall be the maximum-rent ceiling or minimum-service standard for the housing accommodations subject thereto.

45 D. C. Code 1604. Petition for adjustment.

(a) Any landlord or tenant may petition the Administrator to adjust the maximum-rent ceiling applicable to his housing accommodations on the ground that such maximum-rent ceiling is, due to peculiar circumstances affecting such housing accommodations, substantially higher or lower than the rent generally prevailing for comparable housing accommodations; whereupon the Administrator may by order

adjust such maximum-rent ceiling to provide the rent generally prevailing for comparable housing accommodations as determined by the Administrator.

(b) Any landlord may petition the Administrator to adjust the maximum-rent ceiling or minimum-service standard, or both, applicable to his housing accommodations to compensate for (1) a substantial rise, since January 1, 1941, in taxes or other maintenance or operating costs or expenses, or (2) a substantial capital improvement or alteration made since January 1, 1941; whereupon the Administrator may by order adjust such maximum-rent ceiling or minimum-service standard in such manner or amount as he deems proper to compensate therefor, in whole or in part, if he finds such adjustment necessary or appropriate to carry out the purposes of this chapter: *Provided,* That no such adjusted maximum-rent ceiling or minimum-service standard shall permit the receipt of rent in excess of the rent generally prevailing for comparable housing accommodations as determined by the Administrator.

45 D. C. Code 1605. Prohibitions.

(a) It shall be unlawful, regardless of any agreement, lease, or other obligation heretofore or hereafter entered into, for any person to demand or receive any rent in excess of the maximum-rent ceiling, or refuse to supply any service required by the minimum-service standard, or otherwise to do or omit to do any act in violation of any provision of this chapter or of any regulation, order, or other requirement thereunder, or to offer or agree to do any of the foregoing. Nothing herein shall be construed to require the refund of any rent

paid or payable for the use or occupancy of housing accommodations prior to the 30th day following the enactment of this chapter.

(b) No action or proceeding to recover possession of housing accommodations shall be maintainable by any landlord against any tenant, notwithstanding that the tenant has no lease or that his lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled, unless—

(1) The tenant is (a) violating an obligation of his tenacy (other than an obligation to pay rent higher than rent permitted under this Act or any regulation or order thereunder applicable to the housing accommodations involved or an obligation to surrender possession of such accommodations) or (b) is committing a nuisance or using the housing accommodations for an immoral or illegal purpose or for other than living or dwelling purposes, or

(2) The landlord seeks in good faith to recover possession of the property for his immediate and personal use and occupancy as a dwelling, or

(3) The landlord has in good faith contracted in writing to sell the property for immediate and personal use and occupancy as a dwelling by the purchaser and that the contract of sale contains a representation by the purchaser that the property is being purchased by him for such immediate and personal use and occupancy, or

(4) The landlord seeks in good faith to recover possession for the immediate purpose of substantially altering, remodeling, or demolishing the property and replacing it with new construction, the plans for which altered, remodeled, or new construc-

tion having been filed with and approved by the Commissioners of the District of Columbia.

45 D. C. Code 1610. Enforcement—Penalties.

(a) If any landlord receives rent or refuses to render services in violation of any provision of this chapter, or of any regulation or order thereunder prescribing a rent ceiling or service standard, the tenant paying such rent or entitled to such service, or the Administrator on behalf of such tenant, may bring suit to rescind the lease or rental agreement, or, in case of violation of a maximum-rent ceiling, an action for double the amount by which the rent paid exceeded the applicable rent ceiling and, in case of violation of a minimum-service standard, an action for double the value of the services refused in violation of the applicable minimum-service standard or for $50, whichever is greater in either case, plus reasonable attorneys' fees and costs as determined by the court. Any suit or action under this subsection may be brought in the municipal court of the District of Columbia regardless of the amount involved, and the municipal court is hereby given exclusive jurisdiction to hear and determine all such cases.

(b) Any person who willfully violates any provision of this chapter or any regulation, order, or requirement thereunder, and any person who willfully makes any statement or entry false in any material respect in any document or report required to be kept or filed thereunder, and any person who willfully participates in any fictitious sale or other device or arrangement with intent to evade this chapter or

any regulation, order, or requirement thereunder, shall be prosecuted therefor by the corporation counsel of the District of Columbia or an assistant, on information filed in the police court of the District of Columbia, and shall upon conviction be fined not more than $1,000 or imprisoned for not more than one year, or both.

45 D. C. Code 1611. Definitions.

As used in this chapter—

(a) The term "housing accommodations" means any building, structure or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes in the District of Columbia (including, but without limitation, houses, apartments, hotels, rooming- or boarding-house accommodations, and other properties used for living or dwelling purposes) together with all services supplied in connection with the use or occupancy of such property.

* * * * *

(g) The term "landlord" includes an owner, lessor, sublessor, or other person entitled to receive rent for the use or occupancy of any housing accommodations.

(h) The term "person" includes one or more individuals, firms, partnerships, corporations, or associations and any agent, trustee, receiver, assignee, or other representative thereof.

The Emergency Price Control Act of January 30, 1942, 56 Stat. 23, provided:

Section 1 (c):

The provisions of this Act shall be applicable to the United States, its terri-

tories and possessions, and the District of Columbia.

* * * * *

Section 2 (b):

Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he shall issue a declaration setting forth the necessity for, and recommendations with reference to, the stabilization or reduction of rents for any defense-area housing accommodations within a particular defense-rental area. If within sixty days after the issuance of any such recommendations rents for any such accommodations within such defense-rental area have not in the judgment of the Administrator been stabilized or reduced by State or local regulation, or otherwise, in accordance with the recommendations, the Administrator may by regulation or order establish such maximum rent or maximum rents for such accommodations as in his judgment will be generally fair and equitable and will effectuate the purposes of this act. So far as practicable, in establishing any maximum rent for any defense-area housing accommodations, the Administrator shall ascertain and give due consideration to the rents prevailing for such accommodations, or comparable accommodations, on or about April 1, 1941 (or if, prior or subsequent to April 1, 1941 defense activities shall have resulted or threatened to result in increases in rents for housing accommodations in such area inconsistent with the purposes of this Act, then on or about a date (not earlier than April 1, 1940), which in the judgment of the Administrator, does

not reflect such increases), and he shall make adjustments for such relevant factors as he may determine and deem to be of general applicability in respect of such accommodations, including increases or decreases in property taxes and other costs within such defense-rental area. In designating defense-rental areas, in prescribing regulations and orders establishing maximum rents for such accommodations, and in selecting persons to administer such regulations and orders, the Administrator shall, to such extent as he determines to be practicable, consider any recommendations which may be made by State and local officials concerned with housing or rental conditions in any defense-rental area.

* * * * *

SEC. 302. As used in this Act—

* * * * *

(d) The term "defense-rental area" means the District of Columbia and any area designated by the Administrator as an area where defense activities have resulted or threaten to result in an increase in the rents for housing accommodations inconsistent with the purposes of this Act.

* * * * *

(h) The term "person" includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of any of the foregoing, and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing: *Provided,* That no punishment provided by this Act shall apply to the United States, or to any such government, political subdivision, or agency.

The material portion of the Housing and Rent Act of 1947 approved June 30, 1947, 61 Stat. 193, provides:

> Section 202 (a):
>
> The term "person" includes an individual, corporation, partnership, association, or any other organized group of persons, or a legal successor or representative of any of the foregoing.
>
> * * * * * *
>
> Section 209 (b):
>
> Notwithstanding any other provision of this Act, the United States or any State or local public agency may maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action or proceeding is authorized by the statute or regulations under which such accommodations are administered: *Provided*, That nothing in this subsection shall be deemed to authorize the maintenance of any such action or proceeding upon the ground that the income of the occupants of the housing accommodations exceeds the allowable maximum unless such income, less any amounts paid to such occupants by the Veterans' Administration on account of service-connected disability or disabilities, exceeds the allowable maximum.